

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

CIVIL ACTION NO. 04-34 - KSF

Electronically Filed

UNITED STATES OF AMERICA

PLAINTIFF,

V.

EAST KENTUCKY POWER COOPERATIVE, INC.

DEFENDANT

**EXHIBIT A TO
UNITED STATES' NOTICE OF LODGING OF
PROPOSED MODIFICATION TO CONSENT DECREE:
TEXT OF PROPOSED STIPULATION**

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EAST KENTUCKY POWER COOPERATIVE, INC.

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* * * * *

PROPOSED JOINT STIPULATION TO MODIFY CONSENT DECREE

WHEREAS on September 24, 2007, this Court entered a Consent Decree in the above-captioned matter.

WHEREAS Paragraphs 4 and 51 of the Consent Decree require EKPC to begin year-round operation of existing selective catalytic reduction ("SCR") technology at Spurlock Unit 1 within 60 days of entry of the Decree, *i.e.*, November 23, 2007, with such operation to comply with specified 30-day rolling average emission rates for Nitrogen Oxides (NO_x).

WHEREAS EKPC planned to install an additional, third layer of catalyst to its existing SCR at Spurlock Unit 1 during a scheduled outage this Fall.

WHEREAS a transformer failure at the Spurlock Plant required Defendant to alter its plans for installing the third catalyst layer at Spurlock Unit 1, which resulted in Defendant's inability to operate the SCR in time to meet the applicable 30-day rolling average emission rates for NO_x.

WHEREAS Defendant made a formal force majeure claim pursuant to Paragraph 144 of the Consent Decree on October 15, 2007, to which Plaintiff responded on November 13, 2007.

WHEREFORE in lieu of any dispute or further proceedings concerning EKPC's claim under the Consent Decree's force majeure provisions, the parties hereby stipulate to amend the Consent Decree in this matter, entered on September 24, 2007, as follows:

1. Modify Paragraph 51 of the Consent Decree as follows:

“51. Beginning 60 days after entry of this Consent decree, and continuing until December 31, 2012, EKPC shall operate year-round the SCR technology on Spurlock 1 and Spurlock 2 to achieve and maintain the Emission Rates required by this Paragraph: except that the deadline for compliance with this requirement for Spurlock 1 may be extended until either January 23, 2008, or 30 days after the date by which EKPC completes the installation and begins operation of a third catalyst layer at the Spurlock Unit 1 SCR, whichever date is earlier. EKPC shall operate year-round the SCR technology on Spurlock 1 so as to achieve and maintain a 30-Day Rolling Average Emission Rate for NO_x not greater than 0.120 lb/mmBTU. EKPC shall operate year-round the SCR technology on Spurlock 2 so as to achieve and maintain a 30-Day Rolling Average Emission Rate for NO_x not greater than 0.100 lb/mmBTU. During periods when both Spurlock 1 and Spurlock 2 are operating, EKPC shall operate the SCR technology on both Spurlock 1 and 2 so as to achieve and maintain a Combined 30-Day Rolling Average Emission Rate for those two Units for NO_x not greater than 0.100 lb/mmBTU.


- a. In the event that the deadline for compliance with the 30-Day Rolling Average Emission Rate for NO_x for Spurlock 1 is extended pursuant to the first sentence of Paragraph 51, EKPC shall retire NO_x allowances under Kentucky's NO_x budget trading program as described in 401 K.A.R. 51:160 equal to the amount in tons that the actual NO_x emissions

from Spurlock 1 exceed the amount of emissions that would have been emitted had the deadline not been so extended, plus 10 (ten) percent. The base amount of such allowances to be retired shall be calculated by comparing the actual emissions from Spurlock 1 during such extended time period with the emissions that would have been emitted from Spurlock 1 had EKPC complied with the otherwise applicable 30-Day Rolling Average Emission Rate for NO_x of 0.120 lbs/mmbtu. This tonnage amount shall be retired within 90 days after the date by which the third layer of the Spurlock 1 SCR is operational.”

2. All provisions of the Consent Decree unaffected by these modifications shall operate in conjunction with these new provisions in the same manner and to the same extent as did the language in the original Consent Decree.
3. Except as specifically provided in this Stipulation, the parties intend that all other terms and conditions of the Consent Decree will remain unchanged and in full effect.

Dated: January ~~17~~ 2008.

FOR THE UNITED STATES OF AMERICA:


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United States v. East Kentucky Power Cooperative, Case No. 04-34 - KSF (E.D. Ky).

Dated: January 23, 2008.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Dated: February 5, 2008.

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^{1/} Jason Dunn, counsel for the United States, certifies that on December 11, 2007, Mr. Holloway gave permission to sign for him on behalf of Defendant.